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UNCLAS SECTION 01 OF 05 HANOI 000310

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DEPT FOR EAP/MLS
DEPT PASS TO USTR DAVID BISBEE
COMMERCE FOR 4431/MAC/AP/OPB/VLC/HPPHO AND EMIKALIS
BANGKOK for USPTO JNESS

SENSITIVE
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TAGS: [ETRD](#) [ECON](#) [ECPS](#) [KIPR](#) [EAGR](#) [USTR](#) [VM](#)
SUBJECT: USG OFFICIALS DISCUSS TIFA, IPR AND TRADE IMPLEMENTATION
WITH GVN

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REF: A) HANOI 233
B) HANOI 294

1. (SBU) Summary: Officials from USTR and the Department of Commerce discussed a range of current trade issues with Government of Vietnam (GVN) officials during a February 6-9 visit to Hanoi, including: a potential Trade and Investment Framework Agreement (TIFA); intellectual property rights (IPR) enforcement; signal piracy; the GVN IT procurement policy; sanitary and phytosanitary (SPS) measures; recent decrees on cosmetics and labeling; data protection; a new chemicals law; trading rights; updated tariff schedules; customs valuations; and pharmaceutical representative offices. The GVN interlocutors indicated their willingness to work cooperatively to resolve outstanding trade issues, and in many cases have already begun to address USG concerns. The visit laid the groundwork for ensuring Vietnam implements its World Trade Organization (WTO) commitments. End Summary.

TIFA

2. (SBU) USTR's Director for Southeast Asia David Bisbee and Department of Commerce's (DOC) ASEAN Director Elena Mikalis met with a series of GVN officials to urge a positive response to USTR's proposal to initiate negotiation of a Trade and Investment Framework Agreement (TIFA) under the Enterprise for ASEAN initiative. In meetings with the major stakeholders, including the Office of the Government (OOG) Ministry of Foreign Affairs (MFA), Ministry of Trade (MOT) and Ministry of Finance (MOF), GVN officials consistently expressed support for a TIFA, but explained that they must reach inter-ministerial consensus prior to formal agreement. An MOT official commented that an agreement on the TIFA text could be reached "in ten minutes," after receiving approval from the Prime Minister. Bisbee agreed, adding that the TIFA is a very general framework document requiring no new market access commitments from either party. Once in place, the two sides can develop an evolving work plan to address more specific trade and investment issues of mutual interest. The MOT contact confided that the PM's office has signaled its agreement, and MOT hopes for formal written approval soon.

3. (SBU) Several GVN agencies raised questions about the structure of a TIFA Joint Council (ref: TEL D) and its interaction with the existing Joint Council under the Bilateral Trade Agreement (BTA). Bisbee explained that there would be no need to duplicate the structure of the BTA Joint Council, adding that the TA structure could be appropriate for TIFA meetings as well. A TIFA Joint Council could, among other functions, conduct the annual BTA review in a consolidated process, Bisbee said.

Intellectual Property Rights (IPR)

4. (U) IPR enforcement agencies in Hanoi and HCMC briefed the USG officials on the status of implementation of Vietnam's new IPR-related legal framework. Vietnam's enforcement agencies must familiarize themselves with the new regulations and changing responsibilities, a contact at NOI explained, but these changes should ultimately improve the GVN's enforcement capacity. The MOT's Market Management Bureau (MMB) reported that it has been tasked to chair an inter-ministerial task force to coordinate better IPR enforcement with local enforcement agencies, which may help shorten the adjustment period.

5. (U) IPR officials from various agencies stressed the need for additional training for enforcement staff, particularly at the local level, to understand better IP rights and how to prosecute, adjudicate and enforce those rights. Foreign language capabilities prevent many local officials from participating in donor-funded training courses, and GVN officials requested that future USG-sponsored training events provide for interpretation. The USG visitors suggested the two sides work together to develop a joint strategy to strengthen IPR enforcement, including plans for future training. An IPR strategy could be an important element of a TIFA work plan.

6. (U) Bisbee and Mikalis also relayed IPR concerns raised by U.S. industries in HCMC (ref: TEL C) and in Washington. At each stop, Bisbee urged Vietnam to submit a robust report on its IPR enforcement activities as part of USTR's annual Special 301 Review

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process. The GVN officials agreed that it is important to

demonstrate Vietnam's progress in protecting IPR. The various agencies stated that they are sending details of their recent enforcement actions to the Embassy and/or Consulate General.

Signal Piracy -----

17. (SBU) The Ministry of Posts and Telematics (MPT) International Cooperation Department Deputy Director General Dr. Phan Tam conceded that Vietnam has not yet fulfilled its BTA and WTO commitments to issue a regulation mandating that all cable and broadcast providers only transmit licensed content. He reported that MPT has given "clear guidance" to Vietnam Television Technology Investment and Development Company (VTC), a digital terrestrial service provider operated by MPT, and other cable companies to cease broadcasting pirated signals. (Note: VTC illegally broadcasts overspill satellite signals to end users using the state-owned fiber optic network for a one-time decoder box purchase fee. End Note.) Bisbee pointed out that MPT's failure to end VTC's distribution of stolen signals, when it is clearly in a position to do so, is a major concern of the United States. This issue will likely arise in the upcoming Special 301 Review of IPR enforcement in Vietnam, Bisbee said. Dr. Tam requested that U.S. industry provide a list of programs and channels that VTC is pirating so MPT can better intervene with VTC.

IT Procurement -----

18. (SBU) Bisbee thanked MPT's Dr. Tam for his assistance in working to address outstanding USG concerns with the government IT procurement policy set forth in the 2006 Decisions 169 and 223. The current draft circular to guide implementation of these Decisions includes language that addresses some of the USG concerns with respect to Vietnam's WTO commitments by clearly excluding state-owned enterprises (SOEs) from coverage by the policy. Bisbee suggested that MPT drafters undertake efforts to consolidate the various policy elements in Decisions 169, 223 and the new guiding regulation into one document, making the policy more clear and easy to follow.

19. (SBU) The U.S. IT industry has ongoing concerns over the preferences and local content requirements of the policy, Bisbee continued. Tam and Bisbee agreed that some of these concerns may be rooted in a misunderstanding of the policy's scope and intent. A meeting between MPT and the industry would allow MPT to explain the policy to IT firms, while the industry could provide some "best practices" to help the GVN design a more technology-neutral and non-preferential procurement policy to meet its IT procurement needs, Bisbee said. USTR and the Embassy will continue to work with MPT to support such a meeting.

New Cosmetics Regulation -----

10. (U) The head of the Ministry of Health's (MOH) Cosmetics Division explained that the November 2006 Decision 35, which significantly broadened the range of foreign cosmetics products which must be registered before coming into Vietnam, was issued to harmonize Vietnam's regulations with ASEAN cosmetics standards. MOH recognizes the immediate impact these new requirements have on U.S. cosmetics firms, and is therefore seeking to delay implementation to allow for an adjustment period. It therefore issued Decision 13 to postpone the date of effectiveness for new products until April 2007. Domestic transparency requirements dictate that the decision, and therefore the policy's temporary suspension, will not take effect until March 1 -- 15 days after it was published in Vietnam's Official Gazette. In the interim, MOH is sympathetic to, but can do little to allay, the potential difficulties foreign firms may encounter with customs officials.

Sanitary and Phytosanitary (SPS) Measures -----

11. (SBU) The Ministry of Agriculture and Rural Development (MARD) International Cooperation Department (ICD) Deputy Director General Ms. Hoang Thi Dzung informed the USG officials that her department will serve as Vietnam's SPS Enquiry Point and Notification Authority. MARD requested additional USDA-funded programs to enhance Vietnam's SPS procedures. Ms. Dzung also reported that the Minister of Agriculture supports ICD's recommendation to implement

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Vietnam's SPS commitments following the U.S. model. The minister also called for improving the national enquiry point network and creating better linkages to foreign networks, especially the U.S. Department of Agriculture (USDA). To meet these goals, the ministry is developing an SPS action plan, which Dzung committed to share with USTR and the Embassy for comments before it is finalized in late March. MARD plans to publish a guidebook to help domestic producers and traders understand the requirements of the WTO SPS agreement.

12. (SBU) USTR's Bisbee responded by suggesting that Ms. Dzung work with the MOT to develop a prioritized list of technical assistance requests, which could be included in a future TIFA work plan. He encouraged MARD to share future SPS regulations with the WTO as early as possible to avoid confusion and to meet Vietnam's WTO commitments. Vietnam issued a new regulation in December requiring that all animal proteins imported for feed be DNA tested. Even though Vietnam was not at the time a WTO member, Bisbee said, efforts should have been undertaken to follow a more transparent notification process in order to allow the United States to consult on the new requirements. Furthermore, under the BTA, MARD should have consulted with the USG on technical regulations even prior to WTO membership. Ms. Dzung said that because MARD did not notify the WTO of this new regulation, the Department of Animal Health has delayed implementation until June 30.

13. (U) Under the U.S.-ASEAN TIFA, the United States is working with ASEAN member states to raise fruit irradiation standards to facilitate access to the U.S. market. Dzung said that MARD has received the U.S. questionnaire, and intends to submit the information requested so that Vietnamese fruits, such as lychee and dragon fruit, stand a better chance of qualifying for import to the

United States.

Data Protection

¶14. (U) The USG officials relayed concerns over Vietnam's procedures for registering agrochemicals and data protection measures. Vietnam's new IP Law and its WTO commitments require Vietnam to keep confidential data submitted as part of a registration dossier. DDG

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Dzung acknowledged these commitments, and assured that MARD will keep dossier data secret and will not rely upon it for future license approval. As a sign of its commitment, Dzung pointed to Vietnam's December accession to the International Union for the Protection of New Varieties of Plants (UPOV), which entails data protection measures.

Labeling Decree

¶15. (SBU) Bisbee raised concerns over the August 2006 Decree No. 89 on Labeling of Goods with officials from the Ministry of Trade's Multilateral Trade Policy Department. The Decree appears contrary to Vietnam's commitments on shelf-life contained in a May 31, 2006 exchange of letters between Minister of Trade Truong Dinh Tuyen and Deputy United States Trade Representative Karan Bhatia. In the exchange of letters, Vietnam committed to accept voluntary manufacturer-determined "best-if-used-by" dates on food products except for raw food materials and food additives. Decree 89, however, mandates that all food, foodstuffs and drink labels must include an expiry date.

¶16. (SBU) MOT's Multilateral Trade Policy Department Deputy Director Luong Hoang Thai asserted that the May 31 exchange of letters applied to the MOH's Food Hygiene Law prohibiting the import of food raw materials or additives with less than two-thirds shelf life remaining. In his opinion, the letters commit Vietnam to accept "best-if-used-by" dates to permit the import of goods, and do not apply to Vietnam's labeling requirements. Thai reported that per the May 31 letters, Vietnam has decided not to implement the ordinance on food imports, and will consult with other WTO members before instituting any new rules in this area. Thai continued by stating that these actions bring Vietnam in full compliance with its commitments.

¶17. (SBU) Bisbee responded that U.S. negotiators disagree with his interpretation of the intent of the letter. The United States understands that the letters relate to the establishment of shelf life and not simply the use of shelf life for entry. He asked for MOT's cooperation in seeking revisions to the Labeling Decree.

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¶18. (SBU) DDG Thai explained that all products in Vietnam are labeled with the same phrase, which directly translates to mean "date to use." He insisted that all domestic and foreign products were required to use the same wording, and that regardless, Vietnamese consumers would not recognize the difference between expiry and "best-if-used-by." Decree 89 does not distort trade or in any way violate Vietnam's commitments, Thai declared. Vietnamese regulations permit the manufacturer to determine the most appropriate standard to use in order to determine the "date to use" and do not require a mandatory standard for expiration date, said Thai. He suggested that the United States provide evidence that the Decree distorts trade if it wants to protest further the labeling provisions. Bisbee said he would consult with his USG counterparts and would follow up with MOT in the near future. (Note: Foreign and domestic food products currently on the market in Vietnam all carry a "date to use" mark, confirming that Decree 89 does not change existing practice.)

Chemicals Law

¶19. (U) Ministry of Industry's (MOI) International Cooperation Department Director Mr. Cao Quoc Hung reported that the MOI is completing a three-year drafting process for a new comprehensive Chemical Law. According to Hung, the most recent draft has been posted to MOI's website and will soon be available for review in English on the OOG website. The law aims to modernize Vietnam's chemical regulations and to comply with APEC commitments on the Globally Harmonized System (GHS) for the Classification and Labeling of chemicals. Hung also noted that Vietnam's chemical industry is growing rapidly -- 18 percent in 2006 -- and there is a growing need for government regulation.

¶20. (U) USTR's Bisbee encouraged the MOI to have an open dialogue with the USG and U.S. chemical industry as it prepares the draft law. U.S. industry wants to help Vietnam establish a manageable administrative system. As a first step, he proposed a digital video conference (DVC) with U.S. industry representatives to review and understand the draft law better, as well as to gain a clearer picture of what the new legislation aims to accomplish. For example, U.S. experts could help Vietnam create a comprehensive list of permissible chemicals by combining lists developed by the U.S. Environmental Protection Agency (EPA), Japan and Australia. Bisbee also offered to work with MOI to develop chemical registration regulations, which will be necessary before this law takes effect.

¶21. (U) Hung thanked the USG for the offers of assistance. He said that MOI is very concerned with ensuring that the final law can be effectively implemented and would therefore propose the idea of a DVC to his minister. In response to Bisbee's questions about chemical registrations, Hung stated that the GVN intends to recognize the chemical lists of the United States, Japan, China and the European Union, and therefore chemicals on those lists will not be considered "new" to Vietnam. He explained that after the law is posted on the OOG website, it will be available for public review and comment for at least 60 days. Comments received during this period will then be incorporated and a new version will be re-posted for additional comments. MOI intends to make a presentation on the law before the National Assembly in May with the goal of passing the law by the end of 2007.

Trading Rights

122. (U) Vietnam's WTO commitments distinguish between (a) the right to import and (b) trading, or distribution, rights (i.e., the services of warehousing and distribution). Ministry of Trade officials affirmed Vietnam's commitment to provide the right of import for most goods into Vietnam immediately upon WTO accession. Distribution services, however, are to be phased in until 2009. (Note: Under Vietnam's WTO commitments, a foreign company can perform distribution services as a 49 percent partner in a joint venture in 2007; up to a 99 percent partner in a joint venture in 2008; and a wholly-foreign owned company can apply for distribution licenses in 2009. End note.) MOT's Import/Export Department is currently finalizing a decree that will codify Vietnam's commitments on importation rights. This version, which should be promulgated in the next several weeks, incorporates earlier comments submitted by USG negotiators, Multilateral Trade Department DDG Thai said. MOT officials report that Minister Tuyen has approved the draft, which is now before the inter-agency process for approval. USTR's Bisbee

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requested to see a draft. Reminding the MOT that it committed to complete the Decree within 30 days of accession, Bisbee asked if the ministry could provide an official letter or some other document to provide interim coverage until the Decree takes effect. Multilateral Trade Department DDG Thai agreed to raise this possibility with the minister.

123. (U) The GVN has not yet developed a license application form for companies interested in performing distribution services. Absent an official application, MOT's America's Department Deputy Director Nguyen Hong Dzung reported that a U.S. firm must first find a local partner and then jointly send a letter requesting a license to MOT.

Tariff Schedules

124. (U) In meetings with Ministry of Finance (MOF) and Ministry of Trade, Bisbee conveyed U.S. industry reports that some Customs officials in HCMC continue to use pre-WTO tariff schedules. MOF International Cooperation Department Director General Madame Nguyen Thi Bich said that the new tariff schedule, dated December 29, 2006, has been distributed to all local customs offices. She committed to follow up with local HCMC Customs offices to verify use of the correct schedule. MOT's Mr. Thai agreed to work with MOF to ensure a mechanism exists for companies to recover costs in cases such as this.

Pharmaceutical Representative Offices

125. (U) Foreign pharmaceutical companies continue to worry about restrictions on the establishment of representative offices in Vietnam, Bisbee reported. MOT officials requested additional information about the type of activities foreign pharmaceutical firms wish to perform. USTR's Bisbee explained that it would be useful for MOT to sit down with the industry to understand the concerns better, warning that the restrictive regulations are causing some pharmaceutical companies to consider pulling out of Vietnam - something which is in neither country's interests. MOT appeared open to the idea and Bisbee said he would follow up with industry representatives.

Customs Valuation

126. (U) Ministry of Finance's Madame Bich reported that MOF submitted a draft Decree on Valuations to the OOG in January. Several other ministries raised concerns over the draft, however, and inter-ministerial discussions are ongoing. Madame Bich has conveyed USG comments on the draft decree to the drafting committee, and assured Bisbee that they have been taken into account. She stated that the final language would comply with Vietnam's WTO commitments, and hopes the Decree will be finalized by the end of February.

Comment

127. (SBU) Throughout the week's meetings, the GVN interlocutors reciprocated the U.S. officials' desire to capitalize on current momentum to enhance bilateral trade relations. Despite the "thorny" issues raised in some of these meetings, the discussions were productive and atmospherics remained consistently positive. Though the GVN has many issues that will require much work to resolve, this visit helped lay the groundwork for further cooperation in making sure Vietnam meets its obligations as the WTO's newest member.

128. (U) This cable has been cleared by USTR's David Bisbee.

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